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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-457-T - ORDER NO. 94-171 ✓

FEBRUARY 25, 1994

IN RE: Application of William B. Meyer,)	ORDER GRANTING
Incorporated for Certificate of)	RECONSIDERATION
Public Convenience and Necessity)	AND GRANTING
for Operation of Motor Vehicle)	AUTHORITY
Carrier)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the January 27, 1994 Petition for Reconsideration or Rehearing filed by William B. Meyer, Incorporated (Meyer or the Applicant). On December 20, 1993, this Commission issued its Order denying Meyer's Application for Household Goods Authority. The Commission found in that Order that the Applicant did not meet the criteria of fitness described under S.C. Code §58-23-330 (Supp. 1992), and relevant regulations. Meyer submits that the Commission should reconsider its decision for two reasons. First, Meyer alleges that the finding of unfitness is contrary to the weight of the evidence presented at the hearing on the Application. Second, Meyer states that rejection of Meyer's Application is a disproportionate penalty for the Rules violations upon which the Commission based its denial of Meyer's Application.

Meyer alleges that it presented strong, uncontroverted evidence at the hearing that it is fit to be licensed as a motor carrier in this State. The record shows that the Applicant has

been providing transportation services since 1915. The Applicant is affiliated with United Van Lines, which is the largest affiliation of household goods movers in the country. Meyer is a leading United Van Lines agent and, according to the evidence, consistently has one of the highest ratings among United Van Lines agents for safety and compliance with transportation regulations on a nationwide basis. Meyer also submitted financial information in support of its Application, showing that the Company had \$25 million in revenues in 1992, a net income after taxes in 1992 of \$1.6 million, and at year-end 1992, a net worth of \$12 million.

The Commission's finding that Meyer was unfit to be certified in South Carolina was based on its finding that a lease agreement between Meyer and Smith Drayline violated the Commission's regulations on such leases, and that Meyer completed a move in Florence at a time when it did not have the authority to do so. Meyer alleges in its Petition for Reconsideration that the Commission failed to take into consideration certain important aspects of these violations. Meyer alleges that it was uncontroverted that it brought to the attention of the Staff of the Commission the fact that it had entered into a lease with Smith Drayline at the time the lease was entered. Meyer also introduced the lease at the hearing at a time when a lease had not been produced in discovery to the Intervenor in the case. Meyer alleges that it made no attempt to hide the fact of the lease from the Commission, or the actual terms of the lease, since it voluntarily disclosed these matters to the Commission. With regard

to the Florence move, Meyer introduced into evidence at the hearing a customer order form, showing that the customer gave Meyer two Florence addresses as the originating and terminating points of the move. Sam Turrentine of Smith Drayline testified that he advised representatives of Meyer that if the move was entirely within Florence city limits, it was unregulated by this Commission and that it would not be a violation of the law for Meyer to make the move. Therefore, Meyer alleges that its mistake with respect to the Florence transaction was in believing that the move was entirely within the city limits of Florence, and not in believing that it could willfully violate this Commission's regulations. Meyer has requested that the Commission reconsider its weighing of the evidence on Meyer's fitness. Meyer states that it is unchallenged that it is a strong, reputable company, with an excellent track record of providing transportation services. Meyer alleges that the overwhelming weight of the evidence on the issue of fitness showed that Meyer was fit to be certified as a motor carrier in this state.

Also, Meyer alleges that the Commission essentially punished it for two instances of violations by prohibiting it from conducting business in this state and that this penalty is disproportionate to the nature of the violations. Meyer states that its actions should be evaluated in light of the statutory provisions regarding violations contained in §§58-23-80 and 58-23-320 of the S.C. Code. Section 58-23-80 contains criminal penalties for persons violating statutes, regulations, or orders

relating to motor vehicle carriers. The maximum penalty for a third willful offense is \$1,000.00 or 30 days. Section 58-23-320 permits the Commission to suspend or revoke a certificate where it is proved that the "holder has wilfully made any misrepresentation of a material fact in obtaining his certificate or wilfully violated or refused to observe the laws of this state touching motor vehicle carriers or any of the terms of his certificate or of the Commission's proper orders, rules or regulations." As discussed above, Meyer states that the violations committed by it were not willful and knowing violations, and that in light of these statutory provisions governing the penalties to be assessed for willful violations, the penalty imposed on Meyer flowing from the finding of unfitness appears to be disproportionate.

Finally, Meyer submits that public convenience and necessity is not served by the Commission's decision in this case. Meyer presented evidence at the hearing on its application concerning growth in population and business activity in Rock Hill where it wishes to establish intrastate facilities. This evidence was indeed unchallenged by the Intervenor. In fact only one household goods mover with facilities in the Rock Hill area intervened to protest Meyer's Application. Meyer alleges that in view of the growing need for household goods transportation services in the area, and the proven track record of Meyer, it is clear that the public convenience and necessity would be served by permitting Meyer to provide intrastate services from its facility in Rock Hill.

After considering this matter, including the record as a whole, the Commission believes that it should reconsider its decision rendered in Order No. 93-1149. Upon reconsideration of the matter, the Commission believes that the improper lease entered into by Meyer and the nonwilful violations committed by Meyer in completing an unauthorized move should not be enough to reject this carrier's Application for Authority on the basis of fitness. Clearly, Meyer is a long established company. Meyer submitted financial information showing a solid financial basis to do business in South Carolina. Also, the Commission agrees with Meyer's statement of its beliefs that punishment may be disproportionate to the crime in this particular instance. The Commission notes that the Company has been unable to complete intrastate moves prior to and subsequent to the Commission's issuance of Order No. 93-972, rejecting Meyer's Application. In reconsidering this matter, the Commission believes that being without authority for this particular period of time is probably punishment enough for the infractions committed by Meyer. Although the Commission is still concerned about the inappropriate lease employed between Meyers and Smith Drayline, the Commission does agree that Meyer made no attempt to hide the lease or the terms of the lease from the Commission. Further, it appears after reconsideration that the intrastate move completed in the Florence area was made because of a mistake, and a belief that the two destinations involved were within the city limits of Florence, a move not under this Commission's authority.

Also upon reflection, the Commission believes that public convenience and necessity would be served by granting Meyers certain household goods authority in this case, albeit less authority than requested by Meyer. There is testimony in the record that the public convenience and necessity is being served in the Greenville-Spartanburg area. The Commission finds this testimony credible, and believes accordingly that authority to originate moves in the Greenville-Spartanburg area should be limited. Further, the testimony of Chuck Mattes stated that the bulk of the work that the Company desires to do is in the Rock Hill area; i.e. 70% to 80% of its business. Therefore, although the Commission believes that it should grant Meyer some authority, it believes that authority should be limited as follows:

HOUSEHOLD GOODS: Between points and places within a 75 mile radius of Rock Hill, South Carolina and between points and places in this area and points and places in South Carolina excluding shipments originating in Greenville and Spartanburg counties.

The Commission believes that granting this household goods authority to the Applicant will serve the public convenience and necessity in this case because of the reasoning stated above. The authority as delineated above is hereby granted.

IT IS THEREFORE ORDERED:

1. That the Application for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved as delineated above.
2. That the Applicant file the proper license fees and other information required by S.C. Code Ann., Section 58-23-10 et seq.

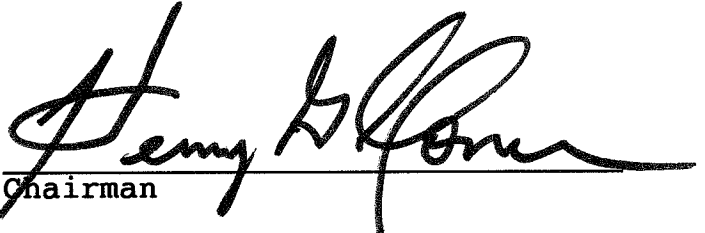
(1976), as amended, and by R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann., Section 58-23-10, et seq (1976) as amended, and the applicable provisions of R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)